and the sale is of a specific quantity, and not of a fractional part of the mass, no title to an undivided share of the whole passes. *Austen* v. *Craven*, 4 Taunt. 644. As then title did not pass at the time of sale, and among the acts still to be done was delivery to the buyer's agent, title did not pass before such delivery. SALE OF GOODS ACT, 1893, § 18 (5). See WILLISTON, SALES, § 276. Did the delivery to X., then, pass title to the defendant? In saying that title passes according to the intent of the parties, it must be remembered that it is the expressed intent which counts, and if the only interpretation of the seller's actions must be to pass title to the defendant, title would so pass regardless of his secret intent. *Wigton* v. *Bowley*, 130 Mass. 252. *Cf. Bragdon* v. *Metropolitan Ry.*, 2 A. C. 666. But in the principal case the expressed intent of the seller was ambiguous. It was capable of being understood by X. in two ways without any negligence on his part. Under these circumstances the seller should be allowed to show the mistake, and no title would pass to the defendant. *Campbell* v. *Mersey Docks*, 14 C. B. R. (N. S.) 412. *Cf. Raffles* v. *Wichelhaus*, 2 H. & C. 906. This would be equally true whether X. was regarded as defendant's personal agent or merely as an agent for transportation. Did the title pass to the plaintiff? If X. was considered as the defendant's personal agent, there would be no implied authority in the seller to appropriate by delivery for the buyer, but consent by the plaintiff's agent to the appropriation at the time of delivery would be necessary. If X. was regarded merely as an agent for transportation, there is some force in the court's argument that the seller has without negligence made an appropriation according to the terms of the contract, to which the buyer must be taken to assent. But it is a question whether the appropriation was a proper one, since X. was not bound as between X. and the seller to deliver to the proper party, and no cause of action would accrue to the plaintiff against X. in case of misdelivery. It might well have been held that the case fell within the rule of misdirected articles. *American Jewelry Co.* v. *Witherington*, 81 Ark. 134; *Woodruff* v. *Noyes*, 15 Conn. 335; *Tinn* v. *Clark*, 94 Mass. 522. But even if the title remained in the seller at the time of delivery, the case may perhaps be supported on the ground that the acts of the seller amounted to an offer to pass the title, which was accepted by the plaintiff by electing to treat the goods as his. See WALD'S POLLOCK ON CONTRACTS, 3 ed., 12.

TENANCY IN COMMON — CONVEYANCE BY METES AND BOUNDS — PARTITION. — A tenant in common of a ninety-nine acre tract conveyed by metes and bounds twenty-seven acres thereof to the defendant in this partition suit. The defendant thereupon improved the parcel. The plaintiff, a co-tenant on the ninety-nine acre tract, now seeks partition of the twenty-seven acres. *Held*, that the ninety-nine acres exclusive of improvements will be valued and if the twenty-seven acres do not exceed the grantor's share they will be allotted the defendant. *Highland Park Mfg. Co.* v. *Steele*, 235 Fed. 465.

A conveyance by metes and bounds of a parcel of a larger tract, by one of several tenants-in-common of the larger tract, cannot give good title to that parcel, for the grantor does not own it. *Duncan* v. *Sylvester*, 24 Me. 482. Nor can the deed operate to convey the grantor's undivided interest in the entire tract, for it does not purport to. *Soutter* v. *Porter*, 27 Me. 405. The grantee in such a case cannot even obtain the tenancy in common of the grantor as to the part specified, for courts refuse to allow such a conveyance on account of the difficulty, if not impossibility, of partitioning the whole tract under such circumstances. See *Boggess* v. *Meredith*, 16 W. Va. 1, 28. But *cf. Mora* v. *Murphy*, 83 Cal. 12, 23 Pac. 63. But, if the conveyed parcel should on partition of the whole tract fall to the grantor, it will by estoppel pass to his grantee. See *Soutter* v. *Porter*, *supra*, p. 417. Moreover, lands improved by a co-tenant will on partition be awarded him if his co-tenants will not be prejudiced. *Noble* v. *Tipton*, 219 Ill. 182, 76 N. E. 151. It seems therefore that the court should re-

gard the grantee's equity and on partition should allot the parcel to the grantor, or as a short cut directly to the grantee. *McNeil* v. *McDougall*, 28 N. S. 296. But in the principal case there is a further difficulty. Partition is asked of the parcel alone. It is well settled that partition of a part of a larger tract held in common will not be granted. It would seem that the plaintiff's bill should on this ground have been dismissed. *Barnes* v. *Lynch*, 151 Mass. 510, 24 N. E. 783; *Emeric* v. *Alvarado*, 90 Cal. 444, 27 Pac. 356. Moreover, the defendant's cross bill for a partition of the whole is ineffectual, for while he may, as shown, obtain rights on partition, before that he has no rights against the grantor's cotenants and therefore cannot demand partition. *Soutter* v. *Porter*, *supra*. The court evidently considered that it had power to make partition of the whole so as to determine equitably the interests of all parties, because the jurisdiction of equity had been invoked in the matter. But a court of equity cannot give relief beyond the scope of the pleadings. *Waldron* v. *Harvey*, 54 W. Va. 608, 46 S. E. 603.

TORTS — DEFENSES — STATUTORY AUTHORITY. — A metal post owned by the defendant street car company, which was operating under legislative franchise, became electrified without its fault. The plaintiff touched it and was burned. *Held*, that the plaintiff may recover. *Fullarton* v. *North Melbourne Electric Tramways & Lighting Co. Ltd.*, [1916], Vict. L. R. 231.

For a discussion of this case, see NOTES, p. 377.

WATERS AND WATERCOURSES — FLOOD WATERS — ACCELERATING FLOW BY ARTIFICIAL DEPRESSIONS. — The Colorado River at the time of the formation of the Salton Sea was doing unprecedented damage by inundating large portions of the country and was threatening the defendant's valuable irrigation system. The river had permanently left its old channel and was making rather successful efforts to cut a new one. The defendants caused the rock which was retarding the cutting of this new channel to be blasted and the result was a rapid flow of the water from off the submerged territory, and a resulting erosion and gullying of the plaintiff's land which had been submerged. *Held*, that the plaintiff cannot recover. *Jones* v. *The California Development Co.*, 52 Cal. Dec. 473.

Under the "common enemy" rule, often miscalled the common law rule, surface waters may be fought off by landowners in any way they see fit regardless of consequences. *Gannon* v. *Hargadon*, 92 Mass. 106; *Bowlsby* v. *Speer*, 31 N. J. L. 351; *Cairo & Vincennes R. Co.* v. *Stevens*, 73 Ind. 278. See 14 HARV. L. REV. 390. But California has adopted the so-called "civil law rule" of surface waters. *Ogburn* v. *Connor*, 46 Cal. 346. Under this rule the natural course of drainage cannot be interfered with, and a right is recognized to have surface water pass in its natural channels. See DOMAT, CIVIL LAW, Cushing's ed., § 1583. But even under the civil law rule, a landowner may reasonably improve natural drainage and hasten the flow of water from his lands, over the lands of a lower proprietor without liability for resulting damage. *Pohlman* v. *Chicago, etc. R. Co.*, 131 Ia. 89, 107 N. W. 1025; *Sowers* v. *Schiff*, 15 La. Ann. 300; *Guesnard* v. *Bird*, 33 La. Ann. 796. Thus the principal case can be supported by regarding the waters of the vagrant river as surface waters and the method of drainage a reasonable one. If, however, the waters be considered as flood waters, the ordinary rule does not apply, and the owners of land along the river have a right to construct levees or embankments for the protection of their lands from the ravages of the flood. *Cubbins* v. *Mississippi River Commission*, 241 U. S. 351. And this is true although the effect thereof may be to prevent the free discharge of such flood waters as may tend to increase the flow of water upon lands not similarly protected. *Lamb* v. *Reclamation Dist.*, 73 Cal. 125, 14 Pac. 625; *McDaniel* v. *Cummings*, 83 Cal.